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Examining the Ethics and Identifying the Social Costs:

The Moral and Economic Justification for a Living Wage

by Charles P. Kielkopf *

I. INTRODUCTION

"Hence arises necessarily the right of securing things to sustain life, and only a wage earned by his labor gives a poor man the means to acquire these things."

Pope Leo XIII

"*Rerum Novarum*" (On the Condition of Workers) 1871¹

A. The Question

How much should a janitor be paid for an hour's work? Adam Smith might answer that market forces should decide.² Father Edward Boyle, a Jesuit Priest involved in the Boston labor movement, disagrees with this free-market approach and so do many others with a social conscience. Father Boyle counters that the "unfettered free market is not only immoral, but also, in the long term, bad economics."³ With this simple statement to the Dunlop Commission on the Future of Worker-Management Relations, Father Boyle not only confronted traditional thinking about the role the market should play in fixing the cost of labor, but more importantly, he identified two critical issues which do not receive adequate attention within the current dialogue of American

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¹ "*Rerum Novarum*" (On the Condition of Workers) Encyclical Letter of Pope Leo XIII, 1871 p. 62.

² Adam Smith, *The Wealth of Nations*, 1776.

domestic affairs: the morality of not paying employees a living wage and the high social costs that society assumes when employers fail to pay living wages.⁴

The morality of not paying workers a living wage is not a frequent topic of social debate in the United States. Nevertheless, the dual moral and economic arguments for a living wage are compelling. Profitability and an ever increasing stock market continue to be the economic and social validation for using market forces to exploit labor. There are many reasons for the absence of a discussion of the ethics of not paying workers a living wage. It could be that as a society our ethical standards are low. We do not see the negative in the "*greed is good*" mentality reflected in popular culture and memorialized in the hit movie "Wall Street".⁵ Possibly, Americans associate discussion of morality to religion, and our constitutional mandate for a separation of church and state instinctively cause people to shy away from a public discussion of the morality of the marketplace -- that is unless an advocacy group is able to capture national headlines as was recently the case concerning American sweatshops in the clothing industry.⁶ Maybe American life is too steeped in a belief of individual liberty to hold someone accountable for moral or ethical transgressions which do not amount to criminal acts. Perhaps, since life is

³ Testimony before the Dunlop Commission, 5 January 1994, the transcript of all testimony before the Dunlop Commission is on file in the Small Business Office of the U.S. Department of Labor, Washington D.C.

⁴ See *Parish v. West Coast Hotel Co.*, 300 U.S. 379 (1937), in this significant case on the constitutionality of a minimum wage, the court wrote: The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being but casts a direct burden for their support upon the community. The community is not bound to provide what is in effect a subsidy for unconscionable employers. The community may direct its law-making power to correct the abuse which springs from their selfish disregard of the public interest. (399-400)

⁵ "Wall Street" 1989 (Oliver Stone).

substantively good for the majority of Americans, we are unwilling to morally examine a wage compensation system that has brought the nation prosperity and made America the most powerful nation in history.

Regardless of the reasons for not discussing the moral issues associated with paying all workers a living wage, moral issues remain vitally important topics, defining who and what American society represents. Many people believe that the free market must operate within certain moral and ethical constraints. Certainly, foremost within those moral and ethical constraints is the issue of how employers treat workers. In the context of today's competitive global marketplace, how American employers treat workers (of any nation), truly defines the values of this country. Work is vital to the continued survival of every person. The rights, treatment, and benefits that workers receive at the hands of their employer are the most insightful feature into a society's value system.

This essay is not about esoteric ethics and morals of the marketplace, it is about the right of all workers to be compensated for their work with a living wage. Outsourcing, and the use of contingent workers to reduce the ability of workers to earn a living wage will be discussed in the context of how these new employer/employee relationships effect a worker's ability to earn a living wage.⁷

⁶ 5/10/97 The Washington Post, Apparel Industry Reaches Agreement to End Sweatshops in U.S. and Abroad, Paul Blustein, A19.

⁷ "Commission on the Future of Worker Management Relations" Report and Recommendations Dec 1994, p 40 hereinafter "Dunlop Commission" The Commission recommends that employers be permitted to experiment with new forms of employer/employee relationships. However there is nothing in the

Morality, ethics, and social justice are often mixed with societal standards and religion. Religious beliefs always include a moral and ethical code. Yet a person who is not religious may well have belief in morals, ethics and social justice. Dogmatic religious tenants can become distracting in discussions of social justice and morality. So this ethical discussion does not become overshadowed by dogmatic sectarian religious positioning, it is appropriate to examine the ethical issues surrounding a worker's right to a living wage within the context of an apparently secular framework. Natural law provides such a framework.

Natural law does not mean the survival of the fittest such as a "law of nature" that might apply to animals.⁸ Natural law is a belief that there are certain basic truths about humanity that are discoverable and that individuals can find those truths through reason.⁹ For thousands of year philosophers have used natural law reasoning to aid in analyzing ethical and moral issues. Natural law's objective reasoning appeals to many diverse thinkers from all religious orientations. Aristotle (a pagan), St. Thomas Aquinas, and Martian Luther King all used and relied on natural law to make many of their ethical

Commission's report that suggests moral responsibility be severed in any manner. To the contrary, the report specifically recommends expanding the definition of employer to recognize the realities of new employer/employee relationships. This Commission, established by both the Secretaries of Labor and Commerce was to conduct fact finding and report on issues relating to enhancing work-place productivity, propose changes in the collective bargaining environment to the enhancement of cooperative behavior, and suggest ways to resolve labor issues outside of the federal courts and government regulatory bodies.

⁸ Such as might flow from a Darwinian order of nature.

⁹ 90 Mich. L. Rev. 2393, 2394 "Some Natural Confusions About Natural Law," Philip Soper.

arguments.¹⁰ Even before the extensive works of St. Thomas Aquinas, the Catholic Church used natural law as a framework for analyzing ethical and moral issues.

Catholic social teaching extensively addresses the ethics and morality of the marketplace as well as a worker's right to a living wage. The natural law arguments advocating a living wage rely on human logic and practical universal judgments for support not on dogmatic Catholic beliefs.¹¹ Even though the Church believes that the natural law is promulgated by God through human reason, the use of natural law in Catholic social teachings is particularly compelling because it has a more objective and nondenominational tone. That objective presentation has probably earned the Church's positions on social justice a larger audience and greater appeal than traditional, more obviously religious, teachings.

There is no question unionization is essential to protect the natural rights of workers, especially those workers in low-skilled, manual labor positions. However, while strongly advocating the need for unions and significant changes in the nation's labor laws so that unions can be effective within today's evolving employment environment, this essay does not have a union focus. There are many outstanding works by knowledgeable authors that address those multi-faceted issues. This essay focuses on the moral obligation of employers to pay a living wage, the principle Catholic social teaching advocating a living wage, and the social costs that employers pass on to society when they do not pay their workers a living wage.

¹⁰ See generally, 40 Loy. L. Rev. 897, Thomas Aquinas: Prudence, Justice and the Law, R. J Araujo, S.J.

This essay first gives a summary of the living wage issue in the generalized fashion of the "*Summa Theologica*" of St. Thomas Aquinas -- question, objection, and assertion.¹² The summary opens by answering the question of why a living wage is important, followed by the traditional objection to an employer's obligation to pay a living wage. The objection is followed by a reply that further develops the hypotheses of why all workers deserve a living wage. The rest of the essay then provides a more in-depth analysis of the right to living wage beginning with an examination of Pope Leo XIII's papal encyclical "*Rerum Novarum*" (On the Condition of Workers). "*Rerum Novarum*" was the document that began the social teachings of the Catholic Church.¹³ This work serves as the philosophical basis for articulating every worker's right to a living wage. The encyclical is historically significant not only for its initiation of Catholic social teaching but because it solidly aligned the institution of the Catholic Church behind workers' rights. "*Rerum Novarum*" is still a viable living document and provides the basis for current Catholic social teaching.¹⁴ After establishing the moral basis for the right to a living wage, the essay then provides a modern-day definition of a living wage. Next, social costs that result when workers are not paid a living wage are

¹¹ Black's Law Dictionary, Abridged 5th Edition, 1983

¹² Thomas Aquinas, "*Summa Theologica*" (translated by the Fathers of the English Province, 1948) [hereinafter *Summa Theologica*]

¹³ It has been said that one of the reasons the pope was able to focus on social teachings is that in about 1870 the papal states were dissolved. Being free from many of practical restraints of ruling, the Pope was now free to focus on social issues in a more objective manner than when he was sovereign. This in no way takes away from the social teachings of the Church, but it may offer one explanation as to why it was not until the late 1800's that the Church undertook these very public social teachings.

¹⁴ Both the 80th and 100th anniversary of "*Rerum Novarum*" were celebrated within the Church by the publishing of letters emphasizing the basic assertion that workers have a right to a living wage and to organize as workers to secure their workplace rights. Apostolic Letter Of His Holiness Pope Paul VI, and

identified and discussed. Finally, with that background, the morality of using outsourcing and contingent workers to not pay living wages is attacked as an immoral and transparent fiction.

The essay recommends initiating dialogues that address the moral issues associated with letting the free-market deny workers their right to a living wage. It asserts that laws must be changed to provided for a base-level of national healthcare. The essay proposes that any employer who does not pay a living wage be taxed to compensate society for the subsidy society provides when workers do not receive living wages. Finally, the essay advocates a change in labor laws so that they aggressively promote a worker's right to organize and bargain collectively. The essay shows that that when organized labor is strong, and has the proper tools, it can, even without any social legislation, ensure employees receive a living wage.

The conclusion of the essay is that the natural law arguments of Catholic social teaching, promoting a fundamental right of all workers to a living wage, is as relevant today as it was over 100 years ago when Pope Leo XIII first espoused the concept. Employers who use outsourcing and contingent workers to deny workers a living wage engage in unethical activity that burdens society with increased social costs. The free market has a role in defining wage rates but wages should always be living wages. The needless poverty and suffering of workers not paid living wages weakens the fabric of

American society. As a nation, America needs to act immediately to end the exploitation of all workers not paid living wages.

II. THE SITUATION

A. The Problem: An Inability to Earn a Living Wage

The problem is that too many hard working men and women in America are not able to earn a living wage. The most recent figures of the U.S. Census Bureau report there are about 36.4 million poor Americans (about 1 of every 7). A number of those poor Americans hold jobs but are not able to provide themselves and their families a reasonable standard of living.¹⁵ The current official poverty level for a family of four with two children is \$16,183.¹⁶ The government established minimum wage is only \$4.75.¹⁷ That wage mandates no raises, health insurance or any other workplace benefit.¹⁸ A full-time worker who works 52 weeks a year at the minimum wage only makes \$9,880 -- not much of a living wage by any standards.¹⁹ Assuming the poverty level establishes some very minimum living wage (and that is an arguable assumption), clearly a head-of-household with a spouse and two children cannot earn a living wage in a

¹⁵ U.S. Census Bureau web page, 1995 Poverty Highlights at: www/census.gov/hhes/poverty/pov95/pov95hi.html.

¹⁶ U.S. Census Bureau web page at: www.census.gov/hhes/poverty/threshld/thresh96.html. The number of poor Americans is calculated by determining the number of people whose income falls below a threshold amount known as the poverty line, this determination varies according to family size and is adjusted annually to account for inflation.

¹⁷ Currently the minimum wage is \$4.75 and will be \$5.15 as of 1 September 1997. see U.S. Department of Labor web page: www.dol.gov/dol/esa/public/minwage/main.htm.

¹⁸ Id.

¹⁹ \$4.75 x 2080 hours = \$9,880.

minimum wage job.²⁰ Minimum wages were first instituted with some idea that they would provide a living wage.²¹ However, over the course of time, the minimum wage has become decoupled from any realistic living wage.²² Because of this decoupling, the payment of the current mandated minimum wage is meaningless when discussing a living wage for workers.

The increased use of outsourcing and contingent workers has stretched, and in most cases broken, the moral responsibility of employers to ensure their employees earn a living wage.²³ Companies that would not think of paying their “own” employees a non-living wage are hiring contractors who pay minimum wages and offer no job related benefits. Increasingly corporate America is claiming their obligations to pay a living wage are relieved by the transparent fiction of using a third party contractor to hire and pay needed employees. This contractor not only pays workers less than a living wage, but makes a profit by doing it.

It is ironic that these low-wage contract workers are often indistinguishable from “regular” company employees. In some cases, before the work was “outsourced,” they were themselves, company employees. Most often these low paid contract workers

²⁰ There is some controversy as to how the poverty level should be calculated. Some argue that the benefits of public assistance need to be added to the poor’s income and that would show that they are doing better than their earned income suggests. The position of this essay is that such an effort to redraw poverty levels would be meaningless within the living wage discussion. If a worker needs public assistance to provide for themselves or their family -- absent some catastrophic event (fire, flood, accident) then they are not earning a living wage and where the poverty line is drawn with regards to that condition has little if any meaning.

²¹ 27 St. Mary’s L.J. 513, A Fair Day’s Pay for a Fair Day’s Work: Time to Raise and Index the Minimum Wage, William P. Quigley 1996.

²²Id.

provide cleaning, foodservice, and groundskeeping services to the company, but increasingly the integration of outsourced/contract workers is occurring at all levels of the corporate structure. While some skilled contract workers do earn living wages, generally all outsourced and contingent workers (at whatever pay) share some reduction in pay, work related benefits, and/or job security.

The costs' society assumes when workers do not receive living wages are both obvious and expensive. For every worker who does not have decent pay and "traditional" living wage, work-place benefits, such as health insurance, sick leave, retirement plans, and life insurance, society must pay the bill when there is a problem. The most publicized and discussed of these issues is workers who do not have medical insurance. The costs of these uninsured directly reflect in the continual increase of everyone's medical costs. Ultimately, society assumes responsibility for the bills of those who cannot pay their bills.

Medical costs are not the only costs' society absorbs when workers do not make a basic living wage. Some of the other costs include rises in social and class strife, more need for welfare, and the risk that poverty increases crime, thus weakening our societal structure. Society is ill-suited to bear these expensive and destructive social costs. Their ultimate impact decreases the quality of life in American society.

B. The Objection

²³ 14 No. 4 Computer Lawyer, Renegotiation and Termination of Outsourcing Agreements, Daniel R.

The free-marketers argue that the market accurately and fairly pays workers what they are worth, and that if every worker receives a living wage, the cost would destroy the vitality of the American workplace. Yet, in spite of that claim, there is no evidence, that the economy of a country fails because it paid workers a living wage. In contrast to that claim, in America, labor unions have repeatedly demonstrated that neither businesses nor the economy collapses when workers receive a living wage. The modern establishment of the American middle class is the result of union insistence, through aggressive bargaining, that industrial workers can be paid a living wage without destroying either businesses or the economy.²⁴

One must be suspect of the “leaders of industry” who claim that business cannot afford to pay living wages. They are the ones who make more money when workers do not receive a living wage. By not paying living wages, these alleged leaders of industry force the rest of society to pay higher taxes, subsidizing the living conditions of their employees. Certainly these employers have no compunction against paying themselves astronomical sums of money. These are the same funds that could increase the wages of workers, thus improving their quality of life and decreasing their families need for societal assistance. By any ethical standard employers who gain because their employees do not receive a living wage are morally and ethically deficient.

Mummery, May 1997.

²⁴ In just over one generation, in the period just prior to and after W.W.II, unions took America’s working poor and through collective bargaining and social action raised them up to become members of a new middle class. That middle class currently serves as the baseline for our nation and has been the example to workers throughout the world.

The concept of the moral obligation to pay workers a living wage is not a liberal or conservative issue, it is a moral issue of conscience. It is also an issue of societal survival. The portion of society that does not earn a living wage can act as a cancer that eventually weakens society. If the society becomes too weak or too sick, a new order will inevitably replace it.²⁵

C. The Reply: Pay Living Wages

It is the right of all workers to receive a living wage for their labor. All employers with direct and indirect control of employees have the moral obligation to ensure their employees receive a living wage. This obligation includes outsourced contract employees, contingent workers, as well as any employees or subcontractor employees in foreign countries.²⁶ Failure of employers to pay living wages only passes the costs

²⁵ During the Great Depression, (1929-1940) there were masses of poor Americans without hope or a realistic promise of a better future who provided the seeds which could have led to a different kind of social revolution than that offered by the "New Deal". Fortunately that revolution was in the form of President Franklin Delano Roosevelt who forever changed the nature and scope of the American social safety net as it was currently known -- it is very possible that there could have been another type of revolution in the United States during the Great Depression, and it might have not been as peaceful.

²⁶ Every American employer should ensure that every worker and subcontractor who provides services or makes products for his business is paid a living wage, regardless of the country where the worker lives. Living wages will change for each country, but the moral obligation to satisfy this basic right for all workers is the same. This is a growing issue in our global economy as manufacturing moves to developing nations. While baseline standards may appear to be drastically different in other countries due to the differences in respective standards of living, the basic issues such as the obligation to pay a living wage, provide a safe working environment, and allow workers to organize are basic worker rights that can be universally implemented. The explanation by Nike (see www.nike.com) of the report issued by former U.N. ambassador Andrew Young as to the working conditions at their foreign plants is not convincing. Nike is certainly right about one thing -- they should do better. In reading Nike's explanation their first point is that they do not own the foreign factories so they are not responsible for what occurs. Of course, as Nike is the sole reason for the existence of these foreign factories, their claim of lack of ownership is misleading and irrelevant. Nike allows poor conditions only to maximize its own profits.

necessary to support workers onto society. Unless society is willing to allow classes of workers to figuratively “die off” (an unacceptable concept) the result is that society provides the subsidy necessary to bring workers and their families up to a living wage. The problem with having society raise workers up is that society is seldom as effective in allocating resources as are workers and their families who earn living wages. Furthermore there are very ethical and moral issues with society subsidizing the profits and livelihoods of employers who do not meet their moral and ethical obligations to pay their workers a living wage.

Given the issue of a living wage as a matter of conscience, it is interesting, but not surprising, that, a supposedly conservative 1937 U.S. Supreme Court, expressed exactly the same concerns as Father Boyle.²⁷ In the landmark case of *West Coast Hotel v. Parrish* the Supreme Court upheld Washington State’s minimum wage law for women. The court eloquently wrote:

“The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being but casts a direct burden for their support upon the community. The community is not bound to provide what is in effect a subsidy for unconscionable employers. The

²⁷ *Parish v. West Coast Hotel Co.*, 300 U.S. 379 (1937). Of course at the time it was surprising that the Supreme Court upheld the Washington minimum wage law because it had previously invalidated other state laws that seemed similar. Interestingly, this case was decided prior to President Roosevelt’s court-packing proposal.

community may direct its law-making power to correct the abuse which springs from their selfish disregard of the public interest.”²⁸

The Supreme Court was not the first great institution to identify the inherent obligation that workers be paid a living wage and the societal costs that result when employers do not pay living wages. It was in 1891 when Pope Leo XIII issued one of the very first papal encyclicals, “*Rerum Novarum*,” (On the Condition of the Working Class). This document is still being used in Catholic social teaching to pronounce much the same message as the Supreme Court. It is unfortunate that the words of the Catholic Church and the Supreme Court have been forgotten by today’s American business community. Society loses every time a worker receives less than a living wage. Regardless of America’s wealth, society cannot afford to pay the bill for employers who do not pay a living wage.

Social commentators often use natural law analysis to advocate restraining the excesses of man -- in this case, preventing the “free market” from driving the cost of labor below a living wage standard.²⁹ The natural law arguments for a living wage value labor not only for its ability to make goods or perform services, but merit labor’s intrinsic reflection of the dignity, value, and necessity of the person performing the work.³⁰ The traditional business perspective sees labor as a commodity to be acquired at the lowest possible cost. The arguments that support the concept of a living wage indicate that there

²⁸ Id. at 399-400.

²⁹ The Case for and Against Natural Law, Russell Kirk, The Heritage Foundation, July 1993.

is a baseline of compensation that should constitute how much to pay every worker, and that payment is a living wage.

II. CATHOLIC SOCIAL TEACHING: ADVOCATING THE MORALITY OF A LIVING WAGE

A. The Roots of the Social Teaching

For more than a century Catholic social teaching has advocated a restricted workweek, the payment of a living wage for workers, and unionization as an appropriate method to gain a living wage and proper working conditions.³¹ In the 1700's, with the arrival of industrialization there were few organizations focused on the well being of the worker.³² Individually, without organization, workers were not able to obtain safe working conditions or fair wages for their labor.³³ These conditions resulted in wretched working conditions and massive exploitation of the working class -- many members of this impoverished working class were Catholics. The Catholic Church developed its position advocating workers' rights in response to the wretched conditions of workers and the associated social unrest.

³⁰ *"Rerum Novarum"*, Leo XIII, 15 May 1891.

³¹ *"Rerum Novarum"*, Leo XIII, 15 May 1891.

³² *Id.* at 6.

³³ During the pre-industrial revolution, wages seldom provided the sole support for workers. Prior to the rise of manufacturing most laborers had multiple forms of support or their support was intertwined with a larger collective of a landowner or group of craftsmen. Most families had some sort of garden or land they worked and while they might work for wages at various times but seldom were those wages their sole source of support.

During these desperate times the working class increasingly accepted Marxist and socialist philosophies. These philosophies were often anti-religious and frequently advocated violent and revolutionary ways of dealing with the plight of the working class - such as establishing new social orders with the elimination of both religion and notions of private property.

About 1871, the social upheavals associated with the Franco-Prussian War and the worker insurrection known as the "*Commune de Paris*" threatened to destabilize Europe.³⁴ The new and developing revolutionary social agendas at least promised workers a better future as opposed to the current system that held little hope for a better life. The despair of the working class was such that noticeable numbers of the Catholic working class left the Church to follow the Marxist and socialist ideologies. This exodus and these social conditions provided the right impetus for the Catholic Church to formally identify herself with the plight of the working class.

The exodus of working-class Catholics from the Church caused many influential Catholics within the Church and society to aggressively study how to best address workers' issues.³⁵ Cardinal Mermillod of France and Count Franz Kuefstein of Austria led one of the more famous of these study groups. Together they formed the Fribourg Union. Over a period of years some of the best Catholic thinkers, philosophers, and moralists had the opportunity to share ideas within this forum. The evolving central

³⁴ Justice in the Marketplace, United States Catholic Conference, 1985 -- Commune of Paris (1872), the revolutionary city government of Paris, responsible for September massacres in which some 1,200 royalists, priests, aristocrats, and criminals died.

theme of the Fribourg Union's discussion was the nature a worker's labor and how it related to just compensation. The Union worked over the period of years to refine the concept of the personal nature of human labor, the necessity of just compensation for a laborer, and every worker's right to a living wage.³⁶ The Fribourg Union concluded:

Work is far more than a commodity. It represents a personal act of the laborer. People faithful to their work acquire a moral right to a wage sufficient to sustain themselves and their families in decency.”³⁷

The Fribourg Union also advocated that workers had an inherent right to organize and bargain collectively to pursue a living wage. The Fribourg Union thought the state should not to be involved in the workplace unless the workers and employers failed to come to some sort of agreement and social anarchy resulted. The results of the Union's intellectual discourse and conclusions served as the principle basis for Pope Leo XIII's "*Rerum Novarum*" and much of the Catholic social teaching that followed.³⁸

While initially sounding fairly radical, the idea that workers acquired a moral right to a living wage fit very well within the moral and ethical philosophies articulated in the

³⁵ Id.

³⁶ Id.

³⁷ Id.

³⁸ Id. The Fribourg Union laid down certain parameters for commitment to social reform that have survived more or less intact through much of this century. They include: (1) no absolute rejection of private property; (2) no support for class struggle; (3) no formal endorsement of capitalism; (4) a preferential option for the right of workers; and (5) firm support of unionization.

works of St. Thomas Aquinas.³⁹ The writings of Aquinas, such as the *Summa Theologica*, helped shape much of the Catholic Church's approach to ethics and moral issues.⁴⁰ His moral philosophy on ethics was based on an idea of natural law that recognized individual worth and "rights". Natural law proposes that moral principles are objectively valid and discoverable by reason.⁴¹ This natural law approach to moral and ethical issues provided both the foundation and the framework for the Church to endorse a living wage.

B. The Role of Natural Law in Catholic Social Teaching

Many of the logical underpinnings for the positions taken by Catholic social teachings are within the concepts of "natural law". Roman jurists used the concepts of "natural law" to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any one people, might be discovered by the rational intelligence of man, and would be found to grow out of and conform to his nature.⁴²

Catholic social teaching uses natural law and natural law analogies to help formulate Church positions on issues of social importance. Natural law provides an ideal framework to deal with issues of ethics and morals. For thousands of years, philosophers

³⁹ St. Thomas Aquinas (1225?-74). The Roman Catholic church regards St. Thomas Aquinas as its greatest theologian and philosopher. Pope John XXII canonized him in 1323, and Pius V declared him a doctor of the church in 1567. Leo XIII made him patron of Roman Catholic schools in 1880.

⁴⁰ *Summa Theologica*.

⁴¹ Philip Solper, Some Natural Confusions about Natural Law, 90 Mich. L. Rev. 2393, 2394 (1992)

and scholars relied on natural law precepts to argue and discuss moral and ethical issues. The attraction of a natural law argument is that it does not rely on any specific belief in God or a specific interpretation of religious works. While presented within the framework of a God, natural law focuses on practical universal judgment which man himself elicits.⁴³ By using a natural law analysis to formulate, articulate, and advocate its social policy, the Catholic Church is able to increase the scope and impact of its teachings. This is not to say that Catholic social teaching does not include quotations from the bible as support for specific positions, such quotations certainly appear, but these quotations are in addition to the natural law explanation of the social teaching, not in place of them.

According to Aquinas, natural law is the law through which human reason can discern the eternal law's prescriptions about what is good and what is evil.⁴⁴ Given this understanding of natural law, any discussion of ethical issues -- such as the role the free market should play in establishing compensation for low-wage workers -- which goes beyond the mandates of legal requirements (such as the legally mandated minimum wage) must be reviewed within a template of moral justice. Natural law provides this template.

Natural law is not irrelevant since some, like Aquinas and the Catholic Church, believe that natural law is a derivative of an order originally determined by God. Aquinas explains natural law to show how every person has an equal right "to pursue the goods

⁴² Black's Law Dictionary, West Publishing, 1983.

⁴³ Black's Law Dictionary, "Natural Law".

⁴⁴ Summa Theologica, , Q. 91,art.2.

and opportunities which enable us to flourish as the beings God created us to be.”⁴⁵ A belief that a god has created an ordered universe, upon which humanity can discover certain truths, does not in any way diminish the usefulness of natural law as an objective framework within which to discuss ethical issues.

A natural law analysis says that the right to pursue one’s needs does not support interfering with the rights of other persons. “For when a person discounts the rights of others, he discounts the interests of the common good, and when anyone does that, he injures the rights of other individuals by forgetting the responsibilities owed to fellow coequals.”⁴⁶ Natural law reasoning would suggest when a person harms the interests of others he therefore harms his own.⁴⁷ Thus, there is the moral imperative to treat the interests of others with dignity and respect.⁴⁸ Such dignity and respect of others would include employers paying employees a living wage for their labor.

C. “*Rerum Novarum*”

Encyclical Letter on the Condition of the Working Classes (1891)

Pope Leo XIII issued “*Rerum Novarum*” in the midst of the social turmoil of the industrial revolution. In this letter Pope Leo denounced socialism and Marxism while decrying the abuses of capitalism. If there was any question about the interests of the

⁴⁵ 40 Loy. L. Rev. 897, 922 Thomas Aquinas: Prudence, Justice, and the Law, Robert J. Araujo, S.J., (1995)

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Id.

Catholic Church, the encyclical solidly aligned Catholicism with the working masses.⁴⁹

The letter was groundbreaking in that it articulated an inherent right to a living wage for all laborers and endorsed labor unions as an appropriate means for workers to achieve their rights.

The encyclical was written to Catholics, but was an attempt to influence society as a whole by articulating the positions of the Church and the reasons the Church held those positions. As St. Thomas Aquinas' natural law perspective on ethics and morality greatly aided the Fribourg Union and Pope Leo XIII to formulate their positions, it was also logical that the encyclical used natural law reasoning as a tool of persuasion. A seemingly secular argument would have a greater chance to influence all members of society, irrespective of their religion or social status. Natural law as applied by the Church has God's creation of the world as its most basic premise. However, to those who do not believe in God, or especially in the "Catholic God," natural law still has some persuasive value because it does not ultimately rely on scripture, but on man's observations about ultimate truths. Make no mistake that the Protestants, socialists, and Marxists necessarily had no great love or respect for the Catholic pope and a natural law format was a fairly neutral way for the Church to convey an ethical message.

Not unlike today's issues of how employers use of outsourcing and contingent workers to sever moral links between themselves and their employees, Pope Leo was similarly concerned about "the changed relations of employer and employee" and

⁴⁹ "*Rerum Novarum*", Leo XIII, 15 May 1891, para 7.

“destitution among the masses.”⁵⁰ The old trade guilds that had once been a powerful advocate of workers were destroyed in the previous century and the increasingly secular society had “cast off traditional religious teaching” leaving the current workers “alone and defenseless, to the inhumanity of employers and the unbridled greed of competitors.”⁵¹

Pope Leo broke human labor down into two components.⁵² First he said that labor is “truly *personal*, because work energy inheres in the person and belongs completely to him by whom it is expended, and for whose use it is destined by nature.”⁵³ Secondly, man’s labor is *necessary*; for without the results of labor a man cannot live; and self-preservation is a law of nature which it is wrong to disobey.⁵⁴ The encyclical makes the argument that if labor was only *personal*, the worker could accept any wages, however because the labor is *necessary* in the fulfillment of the duty to preserve his life, the laborer must only accept a wage that will sustain him. “Hence arises necessarily the right of securing things to sustain life, and only a wage earned by his labor gives a poor man the means to acquire these things.”⁵⁵

D. “The Family Living Wage”

⁵⁰ St. Petersburg Times, Saturday, May 4, 1991 3E.

⁵¹ Id. at 6.

⁵² “*Rerum Novarum*” p. 62.

⁵³ Id.

⁵⁴ The Living Wage: Its Ethical and Economic Aspects, John A. Ryan, Mcmillian, 1912 p 33.

⁵⁵ “*Rerum Novarum*” p. 62.

"Rerum Novarum" clearly aligned the Catholic Church behind the moral concept of a living wage for all workers and the use of labor unions to achieve the dignity associated with the living wage. At the time Pope Leo issued the encyclical, the majority of the Catholics in the United States, and the rest of the world, were members of the working poor. The natural result of *"Rerum Novarum"* was a close alignment between the Catholic Church and the labor movement. In support of the labor movement there developed a cadre of "labor-priests" who focused on helping workers' unionize and obtain economic justice. One of the more famous of these American labor priests was Father John A. Ryan.⁵⁶

One of Father Ryan's many significant accomplishments in the labor field, was a book entitled "A Living Wage." It focused on the definition and components of a living wage in 1912. The book gained worldwide attention at its release. The thesis of the book reflected the teachings of *"Rerum Novarum"* and advanced the ethical position that "the laborer's claim to a living wage is of the nature of a right."⁵⁷ "The book was one of the first publications in any language to advocate the establishment of a minimum wage by law."⁵⁸ Father Ryan was strongly in favor of worker organizations but he believed that labor unions could not bring the necessary change alone. He thought that meaningful change would occur only through legislation. Ryan argued that "the majority of the underpaid workers cannot be lifted out of that condition within a reasonable time except

⁵⁶ President Roosevelt recognized Father Ryan's contributions to the labor movement by asking him to deliver the benediction at two of his inaugurals.

⁵⁷ *The Living Wage: Its Ethical and Economic Aspects*, John A. Ryan, Mcmillian, 1912 p 43.

⁵⁸ *Organized Labor and the Church: Reflections of a "Labor Priest"* Monsignor George G. Higgins with William Bole, Paulist Press, New York 1993 p 26.

by the method of legal enactment.”⁵⁹ Father Ryan’s realistic attitude caused him to believe employers would not have a change of heart on their own. He also knew that only strong unions and the law could force workers to receive a living wage.

Father Ryan’s most significant contribution to the living wage debate comes from his analysis of natural law and the teachings of “*Rerum Novarum*” as to why the living wage was only meaningful if it was a “family” living wage -- one that would allow a worker to provide for and sustain himself and his family.⁶⁰ Using the logic of natural law, Father Ryan analogized, “self-preservation is undoubtedly the first law of nature, but if the experience of the race is any criterion, self-propagation is the second. It is the expression of one of man’s primary and strongest instincts. One of man’s most essential needs is the permanent love and companionship of a person of the opposite sex.”⁶¹ To deny man the opportunity to have a family takes away a fundamental component of humanity -- to propagate. This need directly relates to the basis for the right to a living wage, in that man has a right to expect a wage for his labor that would allow him a full life. A life without family could not be a full life.⁶² With this natural law analysis, Father Ryan concluded that a living wage must be sufficient to provide for a worker and his family.

⁵⁹ The Living Wage: Its Ethical and Economic Aspects, John A. Ryan, Mcmillian, 1912.

⁶⁰ Id at 110.

⁶¹ Id at 117.

⁶² Of course Father Ryan made an exception for those called to celibate religious orders but he acknowledged that was both a difficult life and required a special calling.

Alone there was nothing particularly “Catholic” about Ryan’s efforts to improve the condition of the American worker -- and that gave his efforts extra success as his actions demonstrated that Catholic social teaching was intend for all humanity and not just Catholic laborers. It was Father Ryan’s belief in the value of people as well as his religious beliefs that caused for him to be a social reformer. Father Ryan saw in the early part of the century, just as it is true now, that one had to work to achieve morality in the workplace and strong unions and social legislation was the only way to ensure workers a living wage for their labor.

III. A Living Wage

A. What it Should Include

The definition of a living wage is complex. A “living wage” is the salary and benefits that enable a wage earner to frugally support themselves and their family in reasonable comfort.⁶³ This definition contains no dollar figures, and is not linked to the “Poverty Thresholds” set out by the U.S. Census Bureau. For different people, in different locations, a living wage may have different rates of pay and different components. However, notwithstanding the possible geographical differences of a world-wide living wage, in today’s American economy, a living wage must also include basic workplace benefits such as affordable and meaningful health insurance, paid vacations,

⁶³ “*Rerum Novarum*” p 65 and “The Living Wage” p 111.

sick leave, and some sort of retirement plan to augment social security.⁶⁴ Finally, there must be a level of job security such as can be found in most union positions, where “just cause” is required prior to termination from employment. For a living wage to be meaningful, it must include decent pay (well above the current minimum wage), traditional work-related benefits, and some semblance of job security.⁶⁵ Without all those components any social or economic security would be illusionary -- even at wage levels well above the minimum wage.

If this definition of a living wage sounds generous, view it using personal observations about universal truths, such as those “truths” found in a natural law perspective of an issue. First, when questioning the definition of the living wage, examine a wage and how it meets life’s requirements for an individual and their family. Then determine what amount of pay is necessary to live in frugal comfort? What workplace benefits are necessary? What level of job security is important? Honest answers to those questions provide the first step to recognizing the humanity encompassed within a living wage.

One component of the living wage strawman, not specifically articulated in any of the aforementioned social teachings, is the issue of job security. The concept of

⁶⁴ It is easy for companies to offer health insurance and then charge so much that is not realistically available in a meaningful manner. Since we are discussing workers at the lower end of the wage scale, any meaningful health insurance must be at very low cost or no cost to be reasonably available to low-income workers. Similarly, if a health plan does not reasonably cover necessary care, easy access to a healthcare provider, and preventive medicine, then its value, regardless of its price, is questionable.

⁶⁵ Of course just about any job can end tomorrow if the reasons are right. The issue here is that workers should not be subject to firing for no reason or bad reason -- concepts that are currently allowed in an employment-at-will job site.

employment at will -- that a worker can be fired for good reason, bad reason, or no reason -- has been a scourge on this country for generations. Employment-at-will erodes reasonable job security that is important to meaningful employment.⁶⁶ That employment-at-will has been the baseline employment standard in the non-union sector does not make it a fair, proper, or a socially worthwhile public policy. A worker cannot be secure in anything if the employer may come in one day and fire him for no reason. Poor, low-wage workers are the most susceptible population for improper job discrimination. These workers seldom file complaints because they are either too fearful about losing their jobs, they do not understand their rights, or they do not have the financial means to pursue their claims.⁶⁷ Regardless of the fact that social legislation, civil rights legislation, and the development of workplace torts have worked to erode the concept of employment-at-will, its specter exists in most low-wage jobs.⁶⁸

B. The Objection to a Family Living Wage

Assuming that an employer believes in the concept of a living wage, there is still controversy over the concept that requires the wage be enough to support a family. The

⁶⁶ It is changing. The initial concept of employment-at-will was the result of a legal "scholar" H.G. Wood, Law of Master and Servant §134 at 273 (1877) who either did not understand the law, or just lied about what early English law said about termination of employment. This "mistake" happened at just the "right" time in the country's development and was readily adopted by the business community who quickly decided that it was a good policy. At the time individual rights were not well developed and the conservative, business-oriented, courts quickly adopted this misbegotten policy that business liked so well *generally see* Wagenseller v. Scottsdale Memorial Hosp. 710 P.2d 1025 (Ariz 1985). Currently, all union workers and most public employees have some right to only be terminated for "cause". Increasingly statutory enactment's, an expanding of employment contract theory, and the development of workplace torts are eroding the employment-at-will doctrine.

⁶⁷ Dunlop Commission, Report and Recommendations, p35.

"Poverty Thresholds" published by the U.S. Census Bureau are the prime ammunition for those attacking the idea of a family living. The opponents to a family living wage point to the fact that the poverty threshold for one person under the age of 65 is \$8,163 -- a small enough figure that can be met by working a minimum wage job ($\$4.75 \times 2000 = \$9,500$).⁶⁹ Employers wonder why they should have to pay a worker more because the worker made the voluntary decision to marry and have children. Employers' reason that if workers cannot afford a spouse and children then they should not have them. Of course this does not address the people who care for infirm parents, grandparents, or other family members who are in need of support. The argument is self-serving and misses the point of a living wage.

The point of the living wage is not to pay a worker some subsistence pay that keeps him just above an artificially established poverty line, and then add or reduce the pay with the addition or subtraction of dependents. The idea is that for their labor, each worker should receive compensation that allows them to live with some dignity, in frugal comfort. It is fitting that the single woman with no spouse or dependents be paid the same as a mother of three. A living wage is no windfall to the single woman since she does not have a family, it is just fair wages for her labor. If the mother of three receives a true living wage, when she has her fourth child, it is unlikely she will need to be paid more money so her family still receive a living wage. If her benefits are appropriate to a

⁶⁸ The advent of laws such as Title VII which protects against race, sex, and national origin discrimination, the Americans with Disabilities Act, as well as the Age Discrimination in Employment Act have help make inroads in eroding the employment concept.

⁶⁹ U.S. Census Bureau, Poverty Thresholds: 1996 -- note the current minimum wage is \$4.75. It does not increase to \$5.15 until 1 September 1997.

living wage, her family's health insurance will cover the additional child and her pay will be enough to continue providing for the support of the family in frugal comfort.

V. THE SOCIAL COSTS OF NOT REQUIRING LIVING WAGES

A. Society's Subsidy

John J. Sweeny, the President of the Service Employee's International Union, says that what makes the overall economy work is when workers are successful and are able to contribute back as consumers.⁷⁰ He articulately attacks employers who do not pay living wages. Mr. Sweeny argues when workers are stuck with minimum wage jobs, no health insurance, no paid sick leave, no holidays, and no protection against sexual harassment, safety hazards, or pay discrimination -- society is stuck with full-time workers who have to depend on food stamps, public health care and rent subsidies just to survive.⁷¹ The workers loose, society looses, the only one who may gain is the unethical employer.

Mr. Sweeny paints a rosy picture of the Service Union successes in New York City (principally cleaning and maintenance personnel). In the mid-1930's New York City service workers organized into their current unions. Now they are able to set the wage rate for the entire city -- regardless of whether the worker is a part-time or part of a sub-contracting operation.

⁷⁰ Testimony before the Dunlop Commission, 15 Dec 1993 on file with the U.S. Department of Labor, Washington D.C.

⁷¹ Id.

These workers benefit because they have a decent standard of living. Society benefits because when these workers get sick, they do not burden a public emergency room. They go to their own employer-funded union clinic, then on to a specialist if they need one, all fully covered. When they want career training they do not rely on a Department of Labor grant. They get it at their employer funded state-of-the-art training center. When they retire, they do not go on the dole. Their union pension plus Social Security allows them to continue as productive and contributing citizens. The \$14 per hour, plus benefits, which these service workers make, still makes them low paid, but it allows them to provide an environment for their children that allows them to go "upward and outward into a world that desperately needs their talents and strength."⁷²

B. Medical Insurance

With today's high cost of medical care, it is just about impossible for anyone to be able to afford medical care without the assistance of some sort of insurance program. Americans experiencing the greatest problems related to medical care are those who are not able to get insurance at work and are not able to qualify for public assistance.⁷³ The ability of low-wage earners without medical insurance to pay medical costs is very limited. There are two obvious results. First, too often, low wage earners and their families do not receive preventive care, so they are less able to avoid health problems through preventive treatment. Secondly, the workers simply are not able to afford

medical treatment and when they do get medical treatment it is through the more expensive emergency rooms. When the worker with no health insurance gets their care at emergency rooms, or ends up in the hospital because of their lack of preventive care, then all of society pays an even higher cost for their lack of health insurance. Similarly, when their children do not receive the proper immunizations and preventive medical care, if medical problems develop, they pass their medical costs onto taxpayers or others who have health insurance as higher medical costs.

It is not uncommon news to read in the newspaper about the millions of American workers who do not have health insurance. Princeton University economists Alan B. Krueger and Helen Levy estimate that the share of full-time workers with health insurance fell from 76% in 1992 to 73% in 1994.⁷⁴ Between 1988 and 1993 the number of workers in small firms whose employers offered any health insurance declined 15%.⁷⁵ In 1994 there were almost 40 million Americans without health insurance and 57% of them were full-time workers.⁷⁶ The cost of health care is exorbitant. When the uninsured need healthcare, the effects are staggering for the individuals and burdensome for society. The individuals find themselves in financial ruin without any savings and society finds itself burdened with ever increasing medical expenses.

⁷² Id.

⁷³ 7/10/97 The Washington Post, 19A, Which Way for Medicare? Madison Powers and Ruth Faden.

⁷⁴ 3/17/97 Business Week, Analysis and Commentary: The Economy.

⁷⁵ 8/21/96 USA TODAY 12A, Health-Insurance Reform a Tiny Step in a Long Journey.

⁷⁶ Id.

One explanation for the reduction in health insurance coverage is the reduction of many industrial unionized jobs.⁷⁷ The other explanation is that smaller companies are less likely to offer benefits such as health insurance and a retirement plan. Many of the companies that bid on outsourced jobs are small. Frequently these companies have no history as employers. They form these companies specifically to bid on a certain contract and do not have established employee benefit packages. Good benefit programs are even hard for large rich companies to get and small companies have no leverage to get good programs, even if they were interested. Subsequently, small companies are less likely to have health plans for their workers.⁷⁸ The result is many of the workers performing outsourced contract work do not have the opportunity to participate in any meaningful health insurance plan.

D. Marshall Barry, Director of Applied Research Center for Labor Research and Studies for the Florida International University, conducted an economic analysis on the effects of privatization for the AFL-CIO, Public Employee Department.⁷⁹ Dr. Barry focused on Florida in his study and came up with some significant figures as to how much those without health insurance cost the people of Florida. Dr. Barry took the amount of unpaid hospital bills for both Dade County and Florida in 1990. He then divided that number by the population of the respective areas. On a per capita basis, the

⁷⁷ 11/21/96 L.A. Times A1, National Desk, Sharp Drop in Minorities Pension Coverage Found: Study suggests many blacks and Latinos have a dwindling chance of enjoying a secure retirement.

⁷⁸ Id.

⁷⁹ The Theory and Reality of Privatization: A Macro- and Microeconomics Analysis, by D. Marshall Barry, A Report to the Public Employee Department, AFL-CIO, 1992.

average Dade county resident paid for \$485 for uncompensated health care in 1990.⁸⁰

Thus, for a "family of four, \$1,940 was the amount paid to subsidize those individuals who could not pay their health care bills."⁸¹ The cost for uncompensated healthcare for the state of Florida was lower, but still significant, at \$319 per capita.

Medicaid, Medicare, and state programs picked up much of the cost for this care -
- funded programs already in existence. Nevertheless, taxpayers (society) pays for those programs, and it is not as though healthcare reimbursed by Medicaid does not use the scarce assets of society. One may argue over the dollars and cents of the formula Dr. Barry used to calculate the per capita costs society must bear to pay the bill for individuals without health insurance, but the point remains, that whatever the formula, the costs to society are significant. One can only imagine other uses for those funds if everyone had health insurance....

C. Future Retirement Costs

The social subsidies needed to cover the future costs of workers with no pension plans are not as easy to examine as health care costs. The issue (and related expense) will not show itself for many years. Even if the Social Security system is able to remain financially solvent for the indefinite future, it is unlikely that poor workers, who do not now earn a living wage, will be able to accumulate any savings to augment Social Security that will allow them to provide for themselves in their retirement. The result

⁸⁰ Id at 80.

will be increasing numbers of elderly who will need some sort of social welfare. It is difficult to determine where that money will come from.

The U.S. Department of Labor reports that nearly one half of the workers in the private sector (about 52 million) do not have a retirement plan.⁸² The percentage of workers covered by traditional company retirement plans, known as defined benefit plans, declined from 39 percent in 1975 to 26 percent in 1992.⁸³ Just as there are costs to society when companies do not offer health insurance so are there societal costs when workers retire without meaningful retirement plans.

Low-wage workers are not necessarily unaware of the need to save for their retirement. The problem is that it is difficult to save money for retirement when there is a struggle to put groceries on the table. That is why some sort of automatic, employer-funded, retirement program is essential for low-wage jobs. The need for low-wage workers to have a Social Security supplement is even more critical than better paid workers. As Social Security pays out based on what is paid in -- low-wage workers tend to receive proportionally less than better paid workers in their retirement years. Besides the need for employer funded supplemental retirement plans, these plans need to be portable so workers can keep benefits when they change jobs.

⁸¹ Id.

⁸² 9/9/96 INDSTR 1 The Indianapolis Star/The Indianapolis News ,Copyright 1996, 52 million American workers don't have any kind of retirement plan at work. How can these workers...Save for their Golden Years? Eileen Ambrose.

Employer funded retirement plans for workers are rare in the low-wage and contingent workplace. Low-wage workers also have a greater chance of not having their Social Security wages accurately reported.⁸⁴ Some “employers,” in an attempt to avoid responsibility for paying social security and other mandatory government withholdings, are designating their “employees” as “independent contractors.”⁸⁵ The likelihood that “independent contractors” make required contributions is low. The result is that when retirement time comes, even the minimal amount that would normally be in the Social Security account of a low-wage worker is even less.

Minorities fair poorly in coverage of retirement plans. A recent study by Yung-Ping Chen, a University of Massachusetts-Boston gerontology professor, found that the percentage of blacks covered by private pensions of all types plunged from 45.1% in 1979 to 33.8% in 1993, while coverage among Latinos declined from 37.7% to 24.6%.⁸⁶ During the same period the share of whites with private pension coverage fell at a slower rate from 49.9% to 45.1%.⁸⁷ Regardless of which demographic group has lower coverage the trend is clear and disturbing -- a large number of American workers do not have retirement plans. The cost of supporting these retired workers will be significant. It is possible it could even bring down the social welfare system as we know it. These are costs that society just cannot afford.

⁸³ 8/6/96 Peoria J. Star C1, New credit card lets you borrow against 401(k) Banc One program lets consumers repay their accounts with interest Clare Howard citing U.S. Department of Labor Statistics.

⁸⁴ The Dunlop Commission - Report and Recommendations, Dec 1994 p 36.

⁸⁵ Id.

⁸⁶ 11/21/96 L.A. Times A1, Sharp Drop in Minorities Pension Coverage - Fund Benefits: Study Suggests Many Blacks and Latinos have a Dwindling Chance of Enjoying a Secure Retirement, Robert A. Rosenblatt.

⁸⁷ Id.

D. Poverty, Crime, and Class Warfare

Society bears immense social costs as a result of crime. Along with having incalculable direct and indirect expenses, crime also destroys the very fabric of society. The failure of workers to earn a living wage can often place them in poverty -- and this poverty can sow the seeds for crime.

Three important assertions can be made about poverty, crime, and class warfare. First, while poverty in no way makes a person "bad," it frequently can be a breeding ground for criminal activity. The second assertion is a hypothesis that those workers who earn a living wage, and feel as though they have a stake in society, are less likely to succumb to the temptations of crime. The third assertion is that the creation of a growing impoverished working class, with no stake in the values or continuation of the secular society, serves as a breeding ground for revolution and class warfare that can destroy the society. The fall of communism should in no way be interpreted to mean that issues of class warfare are not viable considerations in today's world with an ever increasing gap between the world's "have's" and "have not's."⁸⁸

⁸⁸ Regardless of its apparent capitalist economy, China is still both the most populist nation on earth and still communist. One just has to look at the terrible ethnic fighting around the globe to realize the fall of the Soviet Union means nothing concerning a lessening of future class struggles. Much of the ethnic conflict stems for a belief -- accurate or not -- that another group is in some way oppressing them and keeping from them access to better jobs, expanded rights, or control of the nations wealth.

In "*Rerum Novarum*" Pope Leo explains why a worker's wages must allow him to provide "comfortably" for himself, his wife and his children. He states that impoverished workers are "always ready for disorder. But if the productive activity of the multitude can be stimulated by the hope of acquiring some property in land, it will gradually come to pass that, with the difference between extreme wealth and extreme penury removed, one class will become neighbor to the other."⁸⁹ Pope Leo's analysis makes sense and sums-up the three considerations identified above. If the working class believes it has a viable stake in society, and it will benefit from a strengthening of the society, then the members of that class will be more productive members of society.

E. Who Benefits

When workers do not receive a living wage, only employers and client companies benefit.⁹⁰ If American society is not going to let poor workers die in the streets, then society pays the bill to provide for those workers and their families who do not receive living wages. We will now discuss three ethical injustices that result when employers fail to pay workers a living wage.

The worker carries the first and greatest injustice when she does not receive a living wage. The rationale that the worker should be happy just to have any job is hollow. It may seem true in the short term as the worker is compelled to try to do as

⁸⁹ "*Rerum Novarum*" at 66.

⁹⁰ The term "client company" or "client employer" is used to identify those employers who engage subcontractors to provide goods and services for their business.

much as possible to provide for her survival. A natural law perspective argues that the employer hurts himself when he does not treat his employees with the same respect and dignity he would expect himself. However, too many employers see this as good business stating they have obeyed the minimum wage law, while pocketing the money that should have been going to paying the workers a living wage.⁹¹

Society receives the second injustice. As society supports workers who do not receive a living wage it is also providing a subsidy to the offending employers. In very practical effect, through food stamps, higher health costs, and rent subsidies, society pays the bill to try to raise these poorly paid workers up to a living wage. Employers who do not pay their workers living wages are the last ones who should receive a subsidy from society. Not only are these employers personally and morally bankrupt for not paying their workers a living wage, but they are taking scarce social resources from the rest of society.

The third injustice relates to the inefficient use of social resources and again society is the victim. Even as society tries to bring poor workers up to a living wage standard through subsidies, it can never do as good a job as if the worker had earned a living wage from the beginning. There is also a certain amount of value to be found when personally making the decision how to allocate her resources. The acceptance of

⁹¹ What the shortsighted employer does not see is the fact that his granddaughter will not have the same opportunities as he does, regardless of the family wealth. The underpaid masses will at some point change society. With increasingly scarce social resources are now being expended to support workers who do not earn a living wage. Society will not be able to maintain spending on the traditional social investments such as schools, roads, infrastructure, and safety that make society a better place for everyone.

public assistance to make ends meet easily breaks the spirit of the hard worker who does not receive a living wage at his workplace. Additionally, social subsidies can never be as efficient as if the worker had been earning living wage in the first place. For example, after stepping on a rusty nail, the child of an uninsured worker might only go to the emergency room after the onset of a serious infection. The treatment and potential damage is much more severe (and expensive) than if the child had a regular tetanus shot from a family physician.

As John Sweeny so eloquently put it, the \$14 per hour that janitors make in New York City gives those workers control over their lives. These union workers have a stake in society, they have medical care, job training, retirement plans and are sending their children on to college and a better life. Additionally, those workers are able to take their earnings and savings to purchase goods from the marketplace further fueling the success of the economy. The interesting lesson is that those employers and client employers are not going out of business because they pay New York City janitors a living wage. No, those employers acquire a motivated workforce and fellow citizens who have a stake in society and are able to contribute positively to society. It is a perverse commentary that society subsidizes the employers who do not pay living wages and therefore hurt the workers, the economy, and society.

V. OUTSOURCING AND CONTINGENT WORKERS

A. Outsourcing

Two corporate executives were surveying their workforce when one said to the other, "See the guy with the glasses? He's a temp. He's an experienced creative director, and he's working on a small in-house publishing project for us. His salary is low, he gets no training, no health benefits, no vacations, and no sick days. In short, he's the perfect employee. And he's inspired me to rethink the future. Ben, I've decided to fire everyone -- all 6,500 employees of Universal Petroleum -- and then re-hire the core players on a consultant basis. I figure the move will cut operating expenses by at least a third, maybe even 40%! What do you think?" The second executive said to the first, "What do I think? It's brilliant, big guy! It's a simple but bold visionary strategy for the 21'st century! Naturally, I love it! When do we start?" The first executive replied, "We"?⁹²

Gary Trudeau is skilled at making people laugh with his dry and sharp wit. Yet the above scenario is only funny because it turns the tables on a corporate executive who thought that he was going to create a more efficient workplace at the expense of subordinate workers. The joke was that he was one of the subordinate workers. Make no mistake, the comic strip gives great insight that the alleged savings from outsourcing and hiring contingent workers are not achieved because of the creation of a more efficient workplace, but because the same workforce now performs the same tasks for less compensation. When the workers are already low-wage and low-skilled, the downward

⁹² G.B. Trudeau, *Doonesbury*, June 20, 1993.

shift of pay and benefits associated with outsourced and contingent work pushes their pay below the standard for a living wage.

The logic is that firms which specialize in a certain service or function are able to provide that function more efficiently. Additionally, because the client company only contracts for a service, they can easily decide to terminate the service if conditions change. It is usually much more difficult to terminate a company employee than to terminate a service contract. The contractor is able to specialize on providing only one service. The theory is that they are able to perform the function more efficiently and they can charge less. The result is that everybody wins. The business receives the same services for less cost, the contractor makes a profit, they still employ the workers....sort of sums up what American is all about -- everybody makes money and is happy.

Not true. In breaking the link between the worker and the true employer, outsourcing only allows for the exploitation of labor that many "responsible" corporate entities would not pursue on their own. For example, it is unlikely a major corporation would pay a janitor only \$7.00 per hour with no workplace benefits. Besides the very low wage, its corporate culture most likely insists that all employees have paid vacations, paid holidays, health insurance, life insurance, a retirement plan, and some chance for raises and promotion. The security associated with those benefits often allows a low-wage workers to earn a living wage.

However, when that very same position is outsourced, even though the janitor walks the same halls and pushes the same broom all of a sudden the corporation feels no obligation to ensure that the employee earns a living wage. The irony of this situation should be lost on no one. In this scenario, but for the intermediate employer, the company washes its hands of all responsibility for the person who sweeps its floors. In this manner, the corporation voluntarily tries to “outsource” whatever moral obligation it had to the employee.

For the purposes of this analysis there is one principle problem with outsourcing. Correctly or incorrectly outsourcing breaks the legal and moral linkage between client employers and employees with a reduction in wages and benefits. In a macro sense outsourcing can be good business, but when it results in workers not being paid a living wage, then it transcends being a “good” business practice, and becomes exploitative of labor and disruptive to a proper moral/ethical social order.

B. The Legal (but not Moral) Wall

From a legal standpoint, the law prohibits secondary strikes.⁹³ This often is an obstacle to subcontract workers striking for a living wage because this means that employees who clean Y’s building, but work for subcontract X are not able to strike

⁹³ NLRB v Local 3, International Brotherhood of Electrical Workers, 317 F.2d 193 (2d Cir. 1963) Section 8(b)(4) of the National Labor Relations Act has been interpreted to prevent strikes against employers with whom the strikers have no labor dispute. Of course that is the issue in these cases, the strikers contend that the client company is a *de-facto* employer. In reality the client company is directly responsible for the

against Y, and Y can easily get a court injunction to prohibit the picketing. Some might argue that there is nothing inappropriate in that limitation, after all the employees do not work for Y. The problem with that logic in the low-wage subcontracting environment is that for all practical purposes Y does set the wages and benefits of X's employees. Y does this by determining how much he is willing to pay for the service contract. As a result, it is difficult to get effective results from collective bargaining when the only entity workers can direct their issues to is someone who really has little ability to change the situation.

In the cleaning field the price of labor determines about 80% of the costs.⁹⁴ In order to compete, contractors lower their bids. Basically, the contractor who can pay his workers the least amount for the most work will win the contract. Client companies are easily able to dictate the wages and benefits of employees yet the contract insulates client companies from the traditional legal responsibility of employers. They do not have an employer/employee relationship with the contract workers and are immune from concerted action by the workers.

Contractors who are willing to pay their workers increased wages set themselves up for new companies to be able to underbid them when the contract expires. As contractors give their workers raises, over time, the costs of the labor increases.

employees wages and benefits based on what they are willing to pay for the contract. The Dunlop Commission recommended expanding the definition of employer to include an economic realities test.

⁹⁴ Testimony of Mike Garcia, President of Local 1877 of the Service Employees International Union before Dunlop Commission, 27 January 1994.

Correspondingly they are unable to maintain the low bid and another bidder wins the contract. Employees lose their jobs and society absorbs the costs.

There are also dishonest contractors. They are not in the business for the long haul and may even pay below minimum wage. Much of their workforce will consist of illegal immigrants who need work because they cannot apply for most jobs. Similarly, illegal immigrants cannot reasonably complain to authorities about their illegal wage because of their lack of immigration status. These contractors maximize their “take” by not making the necessary tax, unemployment, and the worker's compensation payments that the law requires. Often they might even be behind on what they pay to their employees. Periodically these contractors go out of business overnight and leave the employees owed back pay and ineligible for unemployment payments.⁹⁵

Make no mistake, the amount the client company pays for services dictates a worker's pay. Collective bargaining and unionization are ineffective in bargaining for a living wage as long as the union is not able to strike against the client company that really determines the employees' wages. Even though the technical definition of employer prohibits strikes against client companies there is clearly no ethical prohibition against such strikes. After all, it makes little sense to have the right to join with fellow workers to demand living wages if you can not address the company that controls those wages. Unionization efforts such as “Janitors for Justice” has used civil disobedience as a tool to

⁹⁵ 22 N.Y.U. Rev.L.&Soc. Change 557,558 Contingent Workers in a Changing Economy: Endure, Adapt, or Organize? Jennifer Middleton. Yes, this type of thing really does happen.

overcome the prohibition against secondary strikes.⁹⁶ They have paid fines and been arrested but have achieved some results. Their actions may be legally wrong, but it is unlikely they are morally wrong.

C. The Issues with Contingent Workers

In much the same way as outsourcing allows companies to build a legal wall between themselves and workers, the use of contingent workers reduces an employee's legal relationship with the client company. These part-time relationships often result in reduced pay and few if any work-place benefits. On the average temporary employees earn 20 percent less than their permanent counterparts. Nearly three-fourth's of part-time, full-year employees do not receive health insurance benefits and 90 percent of part-time, part-year, employees do not receive employer-based health insurance coverage.⁹⁷

In 1994, the Secretaries of Labor and Commerce selected John T. Dunlop, a former Secretary of Labor, to head a Commission on the Future of Worker-Management Relations. It was better known as the "Dunlop Commission".⁹⁸ In the report of this Commission they researched and discussed the growing tendency of American employers

⁹⁶ 10/6/96 Denver. Post B02, Denver Post, Copyright 1996 Sunday, October 6, 1996 as well as the Testimony of Mike Garcia before a public hearing of the Dunlop Commission, 27 Jan 1994

⁹⁷ Testimony by Katherine Stone before a public hearing of the Dunlop Commission, April 1994.

⁹⁸ See generally: Report and Recommendations: Commission of the Future of Worker-Management Relations, December 1994.

to use contingent workers. The commission viewed this development of the workforce both as “healthy” and a “cause for concern”.⁹⁹

On the positive side, the Commission viewed the flexibility as fitting in well with modern forms of manufacturing and production.¹⁰⁰ Of course contingent workers are not always the low-wage, janitors and foodservice workers. While the Commission acknowledged the positive value of the well-paid flexible worker, who was a contingent worker by choice, it focused harsh criticism on the negative side of the emerging contingent workforce. The report noted that: “contingent arrangements may be introduced simply to reduce the amount of compensation paid by the firm for the same amount and value of work, which raises some serious social questions.”¹⁰¹

The Commission further concluded that based on significant fact finding, many of the contingent workers receive less pay and benefits than traditional full-time workers. They are also less likely to benefit from labor and employment laws. It found that most contingent workers held part-time jobs involuntarily. The expansion of contingent work “contributed to the increasing gap between high and low wage workers and to the increasing sense of insecurity among workers.”¹⁰² The issues pertaining to contingent workers at the national level must be discussed if America expects to continue with today’s class structure and social system.

⁹⁹ Dunlop Commission, Report and Recommendations p 35.

¹⁰⁰ Id.

¹⁰¹ Id.

As its final damning insight into contingent workers, the Commission verified what this essay has already alleged: that many employers acquire contingent workers only because they want to avoid legal obligations. Some of these unscrupulous employers try to portray contingent workers as "independent contractors." With that designation the employer can totally avoid payment of Social Security taxes, unemployment insurance, worker's compensation, and health insurance.¹⁰³ Of course these contingent workers are not really independent contractors because the manner in which the contractor controls their work -- the use of the "independent contract" title is only a fiction to avoid legal liabilities. The problem is that too often this fraud works and society loses billions of dollars a year in tax revenues while workers suffer because their benefits are non-existent or improperly funded.¹⁰⁴

The Sacramento Bee recently ran an article that stereotypically summed up the despair of outsourced and contingent workers who do not receive a living wage.¹⁰⁵ Maritza Cisneros is a 37 year old mother of four. She emigrated from Nicaragua eight years ago where she worked as a government statistician. Here in the United States she works full time as a janitor and earns \$5.75 an hour or about \$12,000 per year. The poverty level for a family of six such as Cisneros' is \$20,200. Her husband is temporarily disabled and in order to supplement the family income she works three additional part-time cleaning jobs. Market forces keep her pay low. Maritza is not able to spend any waking time with her family -- and for that, both she and her family suffer. Maritza is

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id at 36.

honest and works hard. Maritza deserves to be able to earn a living wage at any one of her jobs. Her lack of a living wage for her honest diligent labor is a proper indictment of the free-market American labor system. Her plight is a call to implement living wage standards for all workers.

VI. RECOMMENDATIONS: Morality in the Marketplace

Given the stagnant state of labor law in the United States some might think that recommendations that attempt to hold corporations to moral standards are too idealistic. However, when discussing morals and the basic human rights of people, it is impossible to be too idealistic. Idealistic suggestions might be unrealistic given the current state of labor law politics in the United States, but that does not also suggest that idealistic remedies should not be part of the current discussion. Additionally, one never knows what issue will next capture the public's attention. For example, it is through public pressure that large American corporations such as Disney and Nike are changing the way they do business with overseas subcontractors who do not pay their employees living wages. This is a change in business practices that occurred due to the public outcry of moral injustice. The apparel industry also has begun to change its business practices in response to public pressure and an anti-sweatshop initiative by President Clinton. While the apparel industry is not yet paying living wages, the key manufacturers have agreed to end "sweatshops" in the United States and abroad. This acknowledgment of worker

¹⁰⁵ 3/6/97 Sacramento Bee, B1 Metro Working Hard, Keeping Up Hope, by Diana Griego Erwin.

dignity is an important first step toward the more ethical conduct of paying workers a living wage.¹⁰⁶

A. Corporations Should be Accountable for Paying a Living Wage

Clearly there are negative consequences for society when workers do not earn a living wage and receive necessary workplace benefits. The best way to directly address this shortcoming is to require every employer to pay its workers a living wage -- regardless of the location of the worker or the degree the employee works for the company. This means that client employers be held responsible for employees if their subcontractors fail to pay living wages and benefits.¹⁰⁷ Offending employers would be taxed so that society could recoup its expenditures used to provide underpaid workers with an appropriate standard of living as well as to pay for the infrastructure to administer that aid. As a practical result companies either pay their workers a living wage or be taxed out of existence.

It sounds harsh to tax companies that do not pay a living wage out of existence, yet it would only occur infrequently and it would result in ethical justice in the labor market. Already society taxes and fines companies that pollute and violate other health

¹⁰⁶ 4/10/97 Washington Post, A19 Apparel Industry Reached Agreement to End Sweatshops in U.S. and Abroad, by Paul Blustein.

¹⁰⁷ The proposal would apply not just to the United States but any country in the world. Certainly the government could place an import duty on goods coming into the United States that came from factories where workers were not paid living wages. This is not as farfetched as it may seem, one could allow the client companies to certify the foreign contract employees were paid a living wage, and if later investigation resulted in the certification being incorrect, then the appropriate duty could be collected from the certifying

and safety programs society believes to be important. Just as society values control of pollution and health/safety issues, so too could a living wage be added to that regulatory scheme. Such regulations would break down the legal wall that insulates client companies from their contract workers. When client companies are held legally responsible for failing to pay workers living wages the most meaningful change will occur. This is not a problem for client companies, it would be easy for them to require their subcontractors to pay their workers living wages and benefits.¹⁰⁸ The real issue and focus would then be on the appropriate definition of a living wage.

It is possible that when all workers receive living wages, client companies might discover that it is more efficient to stop subcontracting out these functions. This would bring the work back in-house. When performing the work in-house there are no middlemen payments. In-house work eliminates the subcontractor who works for profit and the company wins.

This recommendation is not idealistic or unrealistic. Unions have proven that every worker in a traditional low-wage, low-skill occupation, (be it mining, manufacturing, trucking, or cleaning work) can be paid living wages. Furthermore, unions have shown us that these industries can pay the workers a living wage and still be

company. All duties collected could be deposited with organizations such as the Peace Corps or to foreign aid earmarked for developing nations.

¹⁰⁸ Currently the federal government does something very similar to this when they contract out construction or service under the Davis-Bacon Act or the Service Contract Act. In both cases all contractors must agree to pay workers at least at the minimum rate set for that location by the Department of Labor. Now in some cases this rate is low because the wage rate in the surrounding community is low, but it does serve as an example whereby client companies can easily control minimum wages and benefits paid to contract employees.

profitable and viable concerns. An argument exists that forcing employers to pay American workers a living wage would further increase the flight of manufacturing work from America to low-wage developing countries. Those countries have lower standards of living and thus a lower living wage. It is true that the exodus of these jobs might continue, but that exodus is not the result of an employer's obligation to pay living wages.¹⁰⁹ The American *minimum wage* (not living wage) already surpasses the hourly wage rate in developing nations. Workers in developing nations may still make in a day as much as American minimum wage workers make in an hour. American business will never be competitive in the world market because they have the lowest labor costs -- just as products produced by Japanese or German workers will never have the lowest labor costs. American workers and business will successfully compete in the world market because they are able to provide a desirable product at a competitive price. Global competitiveness is achieved through "smart work" and efficient production not because of worker exploitation

The difficulty with this proposal is the definition of a living wage. The poverty level as established by the U.S. Department of Labor is most likely the best start, with differentiation's made depending on location. Certainly the living wage for a family of four in rural Louisiana is different from an urban family in Washington D.C. Notwithstanding possible differences in regional pay, the basic benefit package for a

¹⁰⁹ Business leaves the United States for a variety of reasons: escape from environmental and safety standards, proximity to markets, natural resources, suppliers, as well as to include a cheaper supply of labor. The argument presented here is that it will seldom be cheaper to do something in American just because the wage rate is cheaper. There are other factors such as quality control, efficiency, and a skilled labor pool, that may make production in American competitive with the rest of the world.

living wage must include traditional workplace benefits such as medical insurance, sick leave, vacations, and a retirement plan. The current poverty index does not include such benefits but these benefits are a necessity to any meaningful living wage.

B. Develop Portable Health Insurance

Moralistic and idealistic recommendations still must be anchored in realism. This realism argues for some meaningful national health insurance plan. Ever since the U.S. Congress defeated President Clinton's proposal for national health insurance, the topic has not received not much attention. Nevertheless, such a program is vital for the economic security of low-wage workers. A key component of a national health insurance must be affordable healthcare for both low-wage workers and part-time, contingent, workers. Additionally, any plan for health insurance (public or private) must include portability so that workers could take the same plan with them whenever they moved jobs.

National health insurance does not necessarily mean socialized medicine. At least at first it would seem that a modest plan could be established that provides a basic level of national healthcare. The insurance program may not pay for a heart by-pass surgery, but routine care, routine procedures, and through preventive measures would take care of the majority of ailments that people incur during their life and be a huge improvement over the current lack of healthcare access by poor workers.

The government already has a mandatory retirement program for all workers in Social Security. Hopefully, the establishment of a living wage will adequately address the problem of having Social Security fall short for poor workers during retirement. If workers are making a living wage, then they pay more to Social Security and thus they get back more in their retirement. Additionally, if workers are making a living wage then they will have less competition between saving for their retirement and putting bread on the table. Ideally, employer sponsored retirement supplements would be the way to go in this area, but the need to immediately require the implementation of such a program is less strong than the other suggestions discussed in this essay.

C. Active Government Support for Unionization

In keeping with the scope of this essay, the recommendations to more actively support unionism are general. Suffice it to say that history has shown, strong union activity results in workers earning middle-class living wages. There were problems with union abuses of power, or unions fighting workplace productivity enhancements that are not significant to this discussion. Those were the growing pains of the development of unionism. Today the fate of workers, unions, and business are intertwined. They have a shared interest in the competitiveness of the workforce and the product produced.

Unions are the conscience of the marketplace and without a strong conscience the needed moral changes will never occur. Strong unions significantly increase the numbers of workers earning a living wage. If unions were stronger there is no doubt more workers

would earn living wages -- and our society would be the better for it. Social legislation is one way to ensure that employers pay living wages, but any legislation directed toward employer obligations needs to be accompanied by legislation that would allow unions to be more effective in advocating worker's rights. American labor laws currently hinder the right of the American worker to organize and petition employers for their right to a living wage.

Workers and unions need the legal definition of employer to reflect an economic realities test and eliminate the prohibition on secondary boycotts.¹¹⁰ There are many other recommendations that will give unions the tools they need to effectively organize workers and represent their demands for a living wage. Some of the more popular recommendations highlighted in testimony to the Dunlop Commission include: card check recognition of unions instead of always requiring a formal election, binding arbitration of first contracts once a union represents workers, and a much streamlined grievance process so that violations of labor laws are addressed within a meaningful period of time. All these are worthwhile recommendations. The right of workers to organize is a basic human right and that is the essence of this overall recommendation. It is time for the laws effecting unionization in American to support this right.

VII. CONCLUSION

¹¹⁰ Dunlop Commission, Report and Recommendations, Dec 1994, p 40.

Even within the apparent materialistic ethics of the 1990's, human morality is still a relevant basis upon which to determine social policy concerning the compensation and treatment of workers. Furthermore, mainstream Catholic social teaching for the past 100 years has been right on target in its advocacy of workers' rights. The message of Pope Leo XIII back in 1891 is still compelling, pertinent, and applicable to modern labor problems.

Natural law asserts that by failing to pay a living wage, employers are denying workers their fundamental right to survival. When companies fail to meet their ethical obligation to pay workers a living wage, employers directly hurt both society and themselves.

Employers ignore the interrelated dynamics of society when workers do not receive a living wage. Failure to pay living wages erodes the American social structure. The outlook for the future is bleak as long as children receive insufficient care and opportunity due to their parents inability to earn a living wage. The poverty associated with failing to pay a living wage disenfranchises large segments of the population so that they have no stake in American democratic and market systems. The disenfranchisement of these workers is shortsighted. It will likely sow the seeds of revolutionary, instead of evolutionary, market change.

The good news is that the messages of the unions and the social teachings of the Catholic Church are being publicized. Many of the churches and synagogues in the

United States have adopted social positions supporting a worker's right to a living wage as well as the right to organize in a meaningful manner. Increasingly a social conscience appears to be returning to the country. The apparel industry agreement to end sweatshops is a significant first step in putting morality into the labor market. It shows that public interest concerning the morals of the marketplace exists. The public pressure that can be exerted on the marketplace issues of ethics and morality is powerful. All this suggests that there is still hope, that someday, all workers will receive a mandated living wage for the dignity of their labor.

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